Supreme Court, U.S.
FILED
JUN 4 2003
OFFICE OF THE CLERK

No. 02-1747

In the Supreme Court of the United States

CONGRESSMAN RON PAUL, ET AL., APPELLANTS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.

THEODORE B. OLSON
Solicitor General
Counsel of Record

ROBERT D. MCCALLUM, JR.
Assistant Attorney General

PAUL D. CLEMENT
Deputy Solicitor General

MALCOLM L. STEWART
GREGORY G. GARRE
Assistants to the Solicitor General

DOUGLAS N. LETTER
JAMES J. GILLIGAN
MICHAEL S. RAAB
DANA J. MARTIN
Attorneys

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

LAWRENCE H. NORTON
General Counsel

RICHARD B. BADER
Associate General Counsel

STEPHEN E. HERSHKOWITZ
DAVID KOLKER
Assistant General Counsels
Federal Election Commission
Washington, D.C. 20463

7 pp

QUESTION PRESENTED

In 2002, the President signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. BCRA is designed to address various abuses associated with the financing of federal election campaigns and thereby protect the integrity of the federal electoral process. The question presented by this appeal is as follows:

Whether the Press Clause of the First Amendment to the Constitution imposes greater constraints on permissible campaign finance regulation than do the rights of speech and association protected by the First Amendment.

In the Supreme Court of the United States

No. 02-1747

CONGRESSMAN RON PAUL, ET AL., APPELLANTS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.[1]

OPINIONS BELOW

The opinions of the district court are not yet reported.

JURISDICTION

The judgment of the district court was entered on May 2, 2003. Appellants' notice of appeal was filed on May 7, 2003. Appellants' jurisdictional statement was

[1] This response is filed on behalf of the Federal Election Commission (FEC) and David M. Mason, Ellen L. Weintraub, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Michael E. Toner, in their capacities as Commissioners of the FEC; John Ashcroft, in his capacity as Attorney General of the United States; the United States Department of Justice; the Federal Communications Commission; and the United States of America. Those parties are appellants in *Federal Election Commission* v. *Mitch McConnell, United States Senator*, No. 02-1676.

filed on May 30, 2003. The jurisdiction of this Court is invoked under the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 403(a)(3), 116 Stat. 114.

STATEMENT

This case presents a facial challenge to the constitutionality of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. A three-judge panel of the District Court for the District of Columbia held that several provisions of BCRA violate the First Amendment to the Constitution, while sustaining other BCRA provisions against various constitutional challenges. The district court also held that the plaintiffs' challenges to certain BCRA provisions are not justiciable in this suit. Congress has vested this Court with direct appellate jurisdiction over the district court's decision. See BCRA § 403(a)(3), 116 Stat. 114.

In the district court, appellants Congressman Ron Paul, et al., relied exclusively on the Press Clause of the First Amendment to the Constitution. See Per Curiam op. 106-107; J.S. 7. Appellants "characterize[d] their activities (for example, candidate press releases, broadcast and radio advertisements, and campaign literature) as falling under the constitutional protections afforded to the press." Per Curiam op. 108 (footnote omitted). They contended "that while other First Amendment rights—of speech and association, for example—may be limited by a compelling governmental interest, the freedom of the press is insulated from such limitations." *Ibid.* The district court rejected appellants' claims. *Id.* at 109-113.

The district court explained that this Court's decisions have "alluded to no rights under the Press Clause that are superior to or different than those under the

other clauses of the First Amendment," either generally or in the specific context of campaign finance regulation. Per Curiam op. 111; see *id.* at 111-112. The court therefore concluded that appellants' Press Clause claims were effectively subsumed within the First Amendment challenges brought by other plaintiffs in the case. *Id.* at 113. Appellants now challenge the district court's dismissal of their claims under the Press Clause. As of this date, 11 other jurisdictional statements arising out of the same district court judgment are pending before this Court. See *Mitch McConnell, United States Senator* v. *Federal Election Commission*, No. 02-1674; *National Rifle Association* v. *Federal Election Commission*, No. 02-1675; *Federal Election Commission* v. *Mitch McConnell, United States Senator*, No. 02-1676 (see note 1, *supra*); *John McCain, United States Senator* v. *Mitch McConnell, United States Senator*, No. 02-1702; *Republican National Committee* v. *Federal Election Commission*, No. 02-1727; *National Right to Life Committee, Inc.* v. *Federal Election Commission*, No. 02-1733; *American Civil Liberties Union* v. *Federal Election Commission*, No. 02-1734; *Victoria Jackson Gray Adams* v. *Federal Election Commission*, No. 02-1740; *California Democratic Party* v. *Federal Election Commission*, No. 02-1753; *AFL-CIO* v. *Federal Election Commission*, No. 02-1755; *Chamber of Commerce* v. *Federal Election Commission*, No. 02-1756.

DISCUSSION

Under Section 403(a)(3) of BCRA, the final decision of the district court in this case is "reviewable only by appeal directly to the Supreme Court of the United States." 116 Stat. 114. Pursuant to Section 403(a)(4) of BCRA, this Court is directed "to advance on the docket

and to expedite to the greatest possible extent the disposition of the * * * appeal." 116 Stat. 114. In addition to filing our own jurisdictional statement (see note 1, *supra*) to appeal the district court's rulings declaring certain provisions of BCRA to be invalid, appellees will defend on appeal those provisions of the statute that were sustained against appellants' constitutional challenges. Essentially for the reasons stated in the per curiam opinion (at 109-113), appellants' Press Clause challenges are effectively subsumed within the First Amendment claims brought by other parties to this case, and provide no independent basis for invalidation of any BCRA provision. In order to facilitate expeditious resolution of this case in accordance with the statutory mandate, however, appellees do not seek dismissal of the appeal, or summary affirmance of the district court's judgment, with respect to the court's disposition of appellants' claims.[2]

---

[2] On May 23, 2003, appellees filed a motion for expedited briefing schedule applicable to all then-pending appeals (see p. 3, *supra*) from the district court's judgment in this case. That briefing schedule should also be made applicable to the instant appeal.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General

ROBERT D. MCCALLUM, JR.
Assistant Attorney General

PAUL D. CLEMENT
Deputy Solicitor General

MALCOLM L. STEWART
GREGORY G. GARRE
Assistants to the Solicitor General

DOUGLAS N. LETTER
JAMES J. GILLIGAN
MICHAEL S. RAAB
DANA J. MARTIN
Attorneys

LAWRENCE H. NORTON
General Counsel

RICHARD B. BADER
Associate General Counsel

STEPHEN E. HERSHKOWITZ
DAVID KOLKER
Assistant General Counsels
Federal Election Commission

JUNE 2003